



1 Motion for Summary Judgment, and remands the matter to the  
2 Commissioner for additional proceedings.

3 **JURISDICTION**

4 On March 4, 2003, Plaintiff Alice Hoff (Plaintiff) protectively  
5 filed for disability insurance benefits and social security income  
6 benefits. (Tr. 82-85, 199-202.) She alleged disability due to a  
7 history of foot surgery (bunionectomy) and foot pain, with an onset  
8 date of October 24, 2002. (Tr. 93, 203.) Benefits were denied  
9 initially and on reconsideration. (Tr. 36, 42.) Plaintiff  
10 requested a hearing before an administrative law judge (ALJ), which  
11 was held before ALJ Richard Hines on April 14, 2005. (Tr. 211-31.)  
12 A supplemental hearing was held on October 5, 2005. (Tr. 232-59.)  
13 Plaintiff, who was represented by counsel, testified. Medical  
14 expert George Weillepp, M.D., and vocational expert Jill Dempsey also  
15 testified. The ALJ denied benefits and the Appeals Council denied  
16 review. (Tr. 6.) The instant matter is before this court pursuant  
17 to 42 U.S.C. § 405(g).

18 **STATEMENT OF THE CASE**

19 The facts of the case are set forth in detail in the transcript  
20 of proceedings, and are briefly summarized here. Plaintiff was born  
21 June 26, 1956, and was 49 years old at the time of the hearing.  
22 (Tr. 83, 253.) She had a ninth-grade education and past work  
23 experience as a sales clerk and cashier. (Tr. 99, 102. 235.) She  
24 reported she had tried to obtain a high-school equivalency degree  
25 (GED) three times, but could not pass the test. (Tr. 235.) She  
26 stated she was told she read at a third-grade level and could not  
27 qualify for a GED. (Tr. 245-46.) She testified she was separated  
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1 from her spouse and lived with her mother and fifteen-year-old son  
2 in a three-bedroom trailer. (Tr. 235.) At the time of the hearing,  
3 she was providing in-home care for her mother, which included  
4 cooking, cleaning, shopping and paying the bills. (Tr. 240.) She  
5 testified her condition had worsened due to foot and joint pain,  
6 swollen feet and hands. (Tr. 249-52.)

#### 7 ADMINISTRATIVE DECISION

8 At step one, ALJ Hines found Plaintiff's work as an in-home  
9 care provider for her mother did not qualify as substantial gainful  
10 activity. (Tr. 20.) At step two, he found Plaintiff had severe  
11 impairments from multiple foot surgeries, Raynaud's phenomenon and  
12 osteoarthritis of the knees, which alone or in combination, did not  
13 meet or medically equal any of the administratively recognized level  
14 impairments listed in Appendix I, Subpart P, Regulations No. 4  
15 (Listings). (Tr. 18.) At step four, he found Plaintiff could  
16 perform a "wide range of light and sedentary work." (Tr. 19.)  
17 Specifically he found:

18 [She] would be unable to perform work that would involve  
19 lifting or carrying more than occasional lifting or  
20 carrying of 20 or frequent lifting or carrying of more  
21 than 10 pounds; standing and/or walking for more than a  
total of 2 hours in an 8-hour work day; sitting for more  
than a total of 6 hours in an 8-hour work day; sitting for  
more than a total of 6 hours in an 8-hour workday.

22 (Tr. 19, 23.) In the body of his decision, the ALJ adopted the  
23 residual functional capacity assessment (RFC) by Morris Fuller,  
24 M.D., that specified the following non-exertional restrictions:  
25 occasional climbing, balancing, stooping, kneeling, crouching  
26 crawling; and avoid "concentrated exposure to hazards (machinery,  
27 heights, etc.)." (Tr. 20, 163-70.) ALJ Hines found Plaintiff's  
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1 allegations not credible to the extent they would preclude this  
2 range of work. (Tr. 20, 22.) The ALJ determined Plaintiff was not  
3 capable of performing her past relevant work as a cashier. (Tr.  
4 20.) At step five, he found transferability of skills was not an  
5 issue, and Plaintiff could perform a significant number of jobs in  
6 the national economy. Therefore, she was not found to be under a  
7 disability as defined by the Social Security Act. (Tr. 23.)

#### 8 STANDARD OF REVIEW

9 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
10 court set out the standard of review:

11 A district court's order upholding the Commissioner's  
12 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,  
13 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the  
14 Commissioner may be reversed only if it is not supported  
15 by substantial evidence or if it is based on legal error.  
16 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).  
17 Substantial evidence is defined as being more than a mere  
18 scintilla, but less than a preponderance. *Id.* at 1098.  
19 Put another way, substantial evidence is such relevant  
20 evidence as a reasonable mind might accept as adequate to  
21 support a conclusion. *Richardson v. Perales*, 402 U.S.  
22 389, 401 (1971). If the evidence is susceptible to more  
23 than one rational interpretation, the court may not  
24 substitute its judgment for that of the Commissioner.  
25 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner*, 169  
26 F.3d 595, 599 (9th Cir. 1999).

27 The ALJ is responsible for determining credibility,  
28 resolving conflicts in medical testimony, and resolving  
ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
Cir. 1995). The ALJ's determinations of law are reviewed  
*de novo*, although deference is owed to a reasonable  
construction of the applicable statutes. *McNatt v. Apfel*,  
201 F.3d 1084, 1087 (9th Cir. 2000).

#### 24 SEQUENTIAL PROCESS

25 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the  
26 requirements necessary to establish disability:

27 Under the Social Security Act, individuals who are  
28 "under a disability" are eligible to receive benefits. 42

1 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any  
2 medically determinable physical or mental impairment"  
3 which prevents one from engaging "in any substantial  
4 gainful activity" and is expected to result in death or  
5 last "for a continuous period of not less than 12 months."  
6 42 U.S.C. § 423(d)(1)(A). Such an impairment must result  
7 from "anatomical, physiological, or psychological  
8 abnormalities which are demonstrable by medically  
9 acceptable clinical and laboratory diagnostic techniques."  
10 42 U.S.C. § 423(d)(3). The Act also provides that a  
11 claimant will be eligible for benefits only if his  
12 impairments "are of such severity that he is not only  
13 unable to do his previous work but cannot, considering his  
14 age, education and work experience, engage in any other  
15 kind of substantial gainful work which exists in the  
16 national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus,  
17 the definition of disability consists of both medical and  
18 vocational components.

19 In evaluating whether a claimant suffers from a  
20 disability, an ALJ must apply a five-step sequential  
21 inquiry addressing both components of the definition,  
22 until a question is answered affirmatively or negatively  
23 in such a way that an ultimate determination can be made.  
24 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The  
25 claimant bears the burden of proving that [s]he is  
26 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.  
27 1999). This requires the presentation of "complete and  
28 detailed objective medical reports of h[is] condition from  
licensed medical professionals." *Id.* (citing 20 C.F.R. §§  
404.1512(a)-(b), 404.1513(d)).

1 It is the role of the trier of fact, not this court, to resolve  
2 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
3 supports more than one rational interpretation, the court may not  
4 substitute its judgment for that of the Commissioner. *Tackett*, 180  
5 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
6 Nevertheless, a decision supported by substantial evidence will  
7 still be set aside if the proper legal standards were not applied in  
8 weighing the evidence and making the decision. *Browner v. Secretary*  
9 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
10 there is substantial evidence to support the administrative  
11 findings, or if there is conflicting evidence that will support a

1 finding of either disability or non-disability, the finding of the  
2 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
3 30 (9<sup>th</sup> Cir. 1987).

#### 4 **ISSUES**

5 The question is whether the ALJ's decision is supported by  
6 substantial evidence and free of legal error. Plaintiff argues the  
7 ALJ erred when he (1) failed to meet his burden at step five, and  
8 (2) failed to fully and fairly develop the record. (Ct. Rec. 18 at  
9 6.) She also contends the ALJ failed to give "clear and convincing"  
10 reasons for rejecting her testimony. (Id. at 10.)

#### 11 **DISCUSSION**

##### 12 **A. Credibility**

13 In the absence of affirmative evidence of malingering, an ALJ  
14 must provide specific and cogent reasons for rejecting a claimant's  
15 subjective complaints. The ALJ's reasons must be "clear and  
16 convincing." *Morgan*, 169 F.3d at 599. Furthermore, "the ALJ must  
17 specifically identify the testimony she or he finds not to be  
18 credible and must explain what evidence undermines the testimony."  
19 *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9<sup>th</sup> Cir. 2001) (citation  
20 omitted). The following factors may be considered: (1) the  
21 claimant's reputation for truthfulness; (2) inconsistencies in the  
22 claimant's testimony or between his testimony and his conduct; (3)  
23 claimant's daily living activities; (4) claimant's work record; and  
24 (5) testimony from physicians or third parties concerning the  
25 nature, severity, and effect of claimant's condition. *Thomas v.*  
26 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). If a claimant produces  
27 objective medical evidence of an underlying impairment that could  
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1 reasonably cause pain, an adjudicator may not reject a claimant's  
2 allegations based solely on a lack of objective medical evidence to  
3 "fully corroborate the alleged severity." *Bunnell v. Sullivan*, 947  
4 F.2d 341, 345 (9th Cir. 1991)(citation omitted). The ALJ need not  
5 completely reject nor completely accept the claimant's allegations.  
6 SSR 96-7p. When a claimant can spend a substantial part of his day  
7 engaged in the performance of physical activity which is  
8 transferable to a work setting, such a finding is sufficient to  
9 discredit allegations of disability. See *Morgan*, 169 F.3d at 599-  
10 600. However, the Social Security Act does not require a claimant  
11 to be totally incapacitated to be eligible for benefits. *Fair v.*  
12 *Bowen*, 885 F.2d 597, 603 (9<sup>th</sup> Cir. 1989). Credibility determinations  
13 are the sole province of the ALJ. Where he has made specific  
14 findings justifying his credibility determination, and they are  
15 supported by substantial evidence, the reviewing court will not  
16 second-guess his decision. *Id.* at 604.

17 Here, the ALJ found Plaintiff's allegations of pain and  
18 functional limitations were not totally credible "to the extent that  
19 they would preclude a wide range of light and sedentary work." (Tr.  
20 20.) Specifically, he rejected her testimony of limited activities  
21 of daily living, that the condition of her feet had worsened, that  
22 she had to elevate her legs 4-5 times a day, and that she had  
23 constant back and foot pain. (Tr. 20.) Plaintiff argues the  
24 credibility findings were erroneously based on the fact that she  
25 provided in-home care for her elderly mother, with whom she lived.  
26 (Tr. 20; Ct. Rec. 18 at 10.) However, the ALJ's findings were more  
27 extensive than that. He gave the following specific reasons for  
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1 discounting Plaintiff's pain and limitations testimony, which are  
2 supported by the record: her testimony was inconsistent with her  
3 statement to her doctor in July 2003, that her pain was occasional  
4 and bothered her when she stood too long or crocheted too long (Tr.  
5 178); in September 2003, she reported her pain was eased with non-  
6 prescription ibuprofen (Tr. 172); she has never required significant  
7 pain relief treatment, or reported significant intervention due to  
8 her impairments, such as repeated emergency room visits, office  
9 visits or hospitalization (Tr. 172, 177, 187);<sup>2</sup> and she was a paid  
10 in-home care provider to her mother. (Tr. 119, 178.) He also  
11 correctly found that no physician in the record opined that  
12 Plaintiff was disabled. (Tr. 20.) These are specific, cogent  
13 reasons supported by the record to discount the degree of  
14 limitations alleged by Plaintiff. Although, as Plaintiff argues,  
15 her ability to perform household chores is not, alone, a legitimate  
16 reason to reject her allegations, *see e.g., Fair*, 885 F.2d at 603,  
17 the ALJ provided other "clear and convincing" reasons to justify his  
18 rejection of her severity allegations. Credibility findings are the  
19 sole responsibility of the ALJ. ALJ Hines' credibility findings are  
20 supported by substantial evidence and the court will not second-  
21 guess his determination.

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23  
24 <sup>2</sup> Physical therapy treatment was initiated on September 23,  
25 2003, for shoulder pain. Progress notes document "no pain" by  
26 October 20, 2003. (Tr. 174-75.) An ER report indicates Plaintiff  
27 was treated July 7, 2001, for a fall on her knee. (Tr. 192.)  
28 Plaintiff's shoulder impairment was found non-severe. (Tr. 18.)



1 **B. Vocational Expert Testimony**

2 At step four, the ALJ made the following RFC finding: "The  
3 claimant has the residual functional capacity to perform a  
4 significant range of light and sedentary work." (Tr. 23.) He also  
5 adopted Dr. Fuller's RFC findings which included postural and  
6 environmental limitations, and a two-hour limit for standing and  
7 walking. (Tr. 19-20.) Based on the VE's testimony, he concluded  
8 Plaintiff could perform a significant number of jobs in the national  
9 economy, including "an order clerk, as an assembler, as an  
10 information clerk and as a dowel inspector." (Tr. 23.)

11 At the hearing, VE Dempsey identified Plaintiff's past work as  
12 salesclerk and limited care provider, both of which were classified  
13 light level, semi-skilled with a specific vocational preparation  
14 level (SVP) three. (Tr. 254.) The ALJ presented the following  
15 hypothetical to the VE: an individual of Plaintiff's age, education  
16 (ninth grade) and work experience, capable of unskilled work,<sup>3</sup> who  
17 could "occasionally lift 20 pounds, frequently 10, stand or walk up  
18 to two hours in an eight-hour workday, sit six hours in an eight-  
19 hour workday and occasionally all of the postural climbing,  
20 balancing, stooping, kneeling, crouching and crawling, and . . . no

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21  
22 <sup>3</sup> Unskilled work corresponds to an specific vocational  
23 preparation level (SVP) of 1-2. SSR 00-4p. SVP-2 work is defined  
24 as work that can be learned in 30 days or less. *Id.* Unskilled work  
25 involves working with things (placing or removing materials from  
26 machines that are automatic or operated by others), machine tending,  
27 and duties that require little vocational preparation and judgment.  
28 20 C.F.R. § 404.1568 (a).

1 hazards machinery or heights, also avoidance of temperature  
2 extremes." (Tr. 254-55.) When the ALJ asked, "[w]ould that person  
3 be able to do prior relevant work?," the VE stated the hypothetical  
4 individual could not perform the prior work identified because of  
5 the "unskilled work" requirement. (Id.)

6 The ALJ then described a second hypothetical individual who  
7 could perform the "full range of sedentary work,"<sup>4</sup> as opposed to the  
8 "less than light" range propounded first, and asked if that person  
9 would be able to do "prior relevant work." (Tr. 255.) The VE  
10 answered no, because Plaintiff's prior jobs were classified as  
11 "light." (Id.) The ALJ then asked "[w]ould there be work the person  
12 could be [sic] perform?" The VE testified:

13 Yes. There would be some work. There'd be things,  
14 like, order clerk. This is sedentary and unskilled,  
15 approximately 141,000 positions in the national economy  
16 and about 2,700 positions in Washington State. There'd be  
17 work such as unskilled assembly job, like, final  
18 assembler. There is approximately 104,000 positions in  
19 the national economy and about 1,400 positions in  
20 Washington State. There'd be some, like, information  
21 clerk. This is sedentary and unskilled. There's  
22 approximately 15,000 positions in the national economy and  
23 about 325 in Washington State. There would be production  
24 inspection jobs such as [INAUDIBLE] inspector, sedentary  
25 unskilled. There's approximately 14,000 positions in the  
26 national economy and about 230 in Washington.

27 (Tr. 255.)

28 It appears from this testimony that the VE was responding to  
the second hypothetical describing an individual who could perform

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<sup>4</sup> Sedentary work involves lifting no more than ten pounds at  
a time. It requires an ability to sit for six of an eight-hour day  
and to walk and stand not more than two hours in an eight-hour day.  
SSR 83-10.

1 a full range of sedentary, unskilled work. (Tr. 255.) Thus, the VE  
2 only opined Plaintiff could perform these sedentary jobs. *Distasio*  
3 *v. Shalala*, 47 F.3d 348, 350 (9<sup>th</sup> Cir. 1995). The record does not  
4 contain evidence that there are a significant number of "less than  
5 light" jobs in the national economy that Plaintiff can perform.

6 Plaintiff contends, however, that even these VE opinions have  
7 no evidentiary value because the jobs identified are not consistent  
8 with the ALJ's hypothetical. (Ct. Rec. 18 at 13.) Defendant  
9 responds there are several jobs within the categories identified  
10 that are sedentary, unskilled. (Ct. Rec. 22 at 15-16.) Plaintiff  
11 and Defendant have submitted numerous titles and descriptions from  
12 the DICTIONARY OF OCCUPATIONAL TITLES (DICOT) to support their arguments  
13 regarding the competency of the VE testimony. (Ct. Rec. 18 at 12;  
14 Ct. Rec. 22 at 15-17.) An independent review of the DICOT indicates  
15 there are at least five order clerk jobs, seven assembler jobs, five  
16 information clerk jobs, one "inspector, production, plastic parts"  
17 job (with a SVP-7 rating), and a countless number of inspector jobs,  
18 all at varying SVP and exertion levels. United States Dept. of  
19 Labor, DICOT, 4<sup>th</sup> ed. rev. 1991, Alphabetical Index of Occupational  
20 Titles.<sup>5</sup> The ALJ's finding that Plaintiff could do the job as "dowel  
21 inspector" is not supported by substantial evidence because the VE  
22 testimony indicating the type of inspector job was not transcribed  
23 in the administrative record. (Tr. 255.)

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25 <sup>5</sup> The ALJ's finding that Plaintiff could do the job as "dowel  
26 inspector" is not supported by substantial evidence because the VE  
27 testimony indicating the type of inspector job was not transcribed  
28 in the administrative record. (Tr. 23, 255.)

1 At step five, the burden is on the Commissioner to show  
2 Plaintiff can engage in other types of substantial gainful activity.  
3 The evidence to support the ALJ's step five finding must show  
4 specific and realistic job opportunities, including the existence of  
5 a significant number of jobs. *Sample v. Schweiker*, 694 F.2d 639,  
6 643 (9<sup>th</sup> Cir. 1982). The confusion regarding specific job titles,  
7 requirements and corresponding numbers of jobs in the national and  
8 local economy makes it difficult to evaluate the VE testimony and  
9 the availability of jobs suitable for Plaintiff. *DeLorme v.*  
10 *Sullivan*, 924 F.2d 841, 851 (9<sup>th</sup> Cir. 1991). It is the Government's  
11 responsibility to ensure the credibility, completeness, and quality  
12 of the opinions expressed by the ALJ's expert and/or the resulting  
13 report. *See, e.g., Gallant v. Heckler*, 753 F.2d 1450, 1456 (9<sup>th</sup> Cir.  
14 1984). Although the VE testified there were jobs available at a  
15 sedentary, unskilled level, it is not clear whether she factored in  
16 non-exertional limitations adopted by the ALJ in his final decision.  
17 Further, without knowing which specific job was referenced by the  
18 VE, it is impossible to determine (1) if it is suitable for  
19 Plaintiff's limitations, and (2) if there are a significant number  
20 of appropriate jobs in the national and local economy. Because the  
21 incomplete VE testimony does not support the ALJ's step five finding  
22 with substantial evidence, the matter must be remanded for  
23 additional evidence and a new step five determination. On remand,  
24 if the VE testimony regarding specific job requirements is  
25 inconsistent with DICT definitions, and there is no other evidence  
26 to support a deviation from the DICT, the reason for the  
27 inconsistency must be explained. *Light v. Social Sec. Admin*, 119

1 F.3d 789, 793-94 (9<sup>th</sup> Cir. 1997).

2 **C. Duty to Develop the Record: Illiteracy**

3 Plaintiff argues the ALJ should have developed the record  
4 regarding her illiteracy. She contends that the Medical Vocational  
5 Guidelines would direct a finding of "disabled" if she is determined  
6 "illiterate." (Ct. Rec. 18 at 13-14.) Illiteracy is defined as the  
7 "inability to read or write." A person who cannot read or write a  
8 simple message, instructions or inventory lists is considered  
9 illiterate, even if he or she can write her name. Typically, an  
10 illiterate person has had little or no formal schooling. 20 C.F.R.  
11 § 404.1564(b)(1). An ALJ's duty to develop the record further is  
12 triggered only when there is ambiguous or an inadequate record for  
13 proper evaluation of the evidence. *Mayes v. Massanari*, 276 F.3d  
14 453, 4509-60 (9<sup>th</sup> Cir 2001).

15 Here, Plaintiff did not allege illiteracy as a disability in  
16 her application or in her testimony. She represented in her  
17 Disability Report that she could read and write more than her name.  
18 (Tr. 92.) She also wrote, and signed, narrative remarks describing  
19 her conditions. (Tr. 101, 109.) Plaintiff testified she was told  
20 she has a third-grade reading level. (Tr. 245.) At hearing, she  
21 testified she had trouble understanding words in the written  
22 driver's license test, but passed it after three times. She also  
23 reported she uses a computer to assist her in simple math  
24 calculations. (Tr. 245-47, 252.)

25 Plaintiff cites two cases in support of her argument that she  
26 should be considered "functionally illiterate" based on her third-  
27 grade reading level. The cases cited are not persuasive. The  
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1 claimant in *Skinner v. Secretary of Health and Human Services*, 90  
2 F.2d 447 (6<sup>th</sup> Cir. 1990), was 50 years old, educated in a one-room  
3 school in rural Mississippi, and only completed third grade,  
4 although he attended school part-time until age 17. He could not  
5 read a newspaper. He had his driver's license test administered to  
6 him orally and had never held a job requiring reading or writing  
7 skills. *Id.* at 448. The claimant in *Olsen v. Schwieker*, 703 F.2d  
8 751 (3<sup>rd</sup> Cir. 1983), had completed sixth grade, read at a second-  
9 grade level, possessed an IQ of 75, tested at a borderline range of  
10 intelligence and was considered mentally retarded. He had past  
11 employment as a mover, gravedigger, groundskeeper, trash collector  
12 and janitor. *Id.* at 752, 756. Here, Plaintiff testified that she  
13 worked as a cashier at Goodwill and quit because they would not give  
14 her time off. (Tr. 237.) She reported she was head cashier at  
15 Goodwill, a lead worker who supervised six people. (Tr. 94.) There  
16 was no indication in the record that she had problems performing her  
17 prior work as a cashier, which, according to the VE, is classified  
18 as semi-skilled with a SVP-3. (Tr. 254.) She testified she had  
19 moved around as a child, and this interfered with her school  
20 attendance. (Tr. 246.) There is nothing in the record to suggest  
21 she had borderline intelligence or was unable to read or write. The  
22 ALJ did not have a duty to develop the record regarding illiteracy.

23 Plaintiff also argues the ALJ erred when he did not include her  
24 reading deficits in the hypothetical. (Ct. Rec. 23 at 8.) As  
25 discussed above, the ALJ found Plaintiff was not totally credible,  
26 but he did not specifically reject her allegations regarding her  
27 reading level. See *Holohan*, 246 F.3d at 1208 (ALJ must specifically  
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1 identify rejected testimony and explain what evidence undermines the  
2 claimant's credibility). Unrejected testimony is credited as true.  
3 *Lester v. Chater* 81 F.3d 821, 831 (9<sup>th</sup> Cir. 1995). The ALJ's  
4 hypothetical included an "unskilled work" restriction. Literacy and  
5 the ability to communicate in English have the least significance in  
6 the performance of the primary unskilled work functions. 20 C.F.R.  
7 Pt. 404, Subpt. P, App 2, § 201.00(h)(4). Therefore, a hypothetical  
8 which includes the ability to perform sedentary, unskilled work  
9 would factor in a low-level reading ability. Nonetheless, the scope  
10 of sedentary work available at the unskilled work level is limited.  
11 Non-exertional limitations may further diminish the jobs available.  
12 *Id.* Therefore, on remand, the ALJ must clarify his RFC findings to  
13 describe what, if any, non-exertional restrictions are caused by  
14 Plaintiff's alleged third grade reading level in combination with  
15 her other impairments. At step five, hypothetical questions  
16 presented for VE opinions should include limitations caused by  
17 Plaintiff's reading ability, as well as all other non-exertional  
18 limitations supported by evidence in the record. *Light*, 119 F.3d at  
19 793.

#### 20 CONCLUSION

21 The Commissioner did not meet his burden at step five.  
22 Accordingly,

#### 23 IT IS ORDERED:

24 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 17**) is  
25 **GRANTED** and the matter is remanded to the Commissioner for  
26 additional proceedings consistent with the decision above and  
27 sentence four of 42 U.S.C. § 405(g);

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for **PLAINTIFF** and the file shall be **CLOSED**.

S/ CYNTHIA IMBROGNO

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UNITED STATES MAGISTRATE JUDGE